

PETITION FOR RECONSIDERATION OF **PUTNAM COUNTY SCHOOL DISTRICT**

In the Matter of)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Service Support Mechanism)	CC Docket No. 96-45
)	
Modernizing the E-Rate Program for)	WC Docket No. 13-184
Schools and Libraries)	
)	
Request for Review and/or Waiver by)	
Putnam County School District)	

**PETITION FOR RECONSIDERATION
BY PUTNAM COUNTY SCHOOL DISTRICT**

Putnam County School District (the “District”) respectfully petitions for reconsideration of the Wireline Competition Bureau’s February 28, 2017 Public Notice announcing Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company. The Public Notice dismissed the District’s FY 2015 Form 486 Deadline Waiver Request submitted to the FCC on January 6, 2017¹ citing to a prior FCC appeal decision in *Request for Review of a Decision of the Universal Service Administrator by La Canada Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 30 FCC Rcd 4729, para. 2 (WCB 2015) (“La Canada Order”). The La Canada Order dismissed an appeal that should have been submitted to USAC rather than having been filed with the FCC.²

In the alternative to seeking reconsideration, the District requests waiver of the 60-day appeal deadline so as to be permitted to file its appeal with USAC. The District diligently tried to comply with applicable appeal requirements and did not know that the FCC had reclassified requests for relief from the missed form 486 deadlines as an appeal that should be filed with USAC whereas for the many years

¹ The January 6, 2017 Request for Waiver can be found here: <https://www.fcc.gov/ecfs/filing/10106118590658>. When the District received its Form 486 Notification Letter, they were informed that their E-rate funding would be effectively rescinded since the adjusted service start was set for the last day of the funding year.

² The “La Canada Order” (dated May 11, 2015) can be found here: <https://www.fcc.gov/ecfs/filing/60001031299>.

beforehand had required applicants to seek waivers of the deadline from the FCC. Notably when other such changes have been made – to delineate whether a request for relief should first be submitted to USAC – the FCC provided a grace period during the transition to the new procedure. Such a transition should be offered here.

Discussion:

Please see further evidence of support for either (or both) of these requests in the pages to follow, based on specific FCC Report and Order(s), FCC Orders and Public Notice(s). The FCC Orders are significant as they all deal with the FCC Form 486 deadline issue in different manners, and demonstrate that treatment of this deadline has evolved over the years. This ‘evolution’ has consistently caused confusion and chaos for E-Rate applicants who have often suffered significant funding losses resulting from the ever-shifting standard(s) applied to the Form 486 deadline.

Alaska Gateway Order, 2006	3
Granted relief to 128 petitioners who filed their FCC Form 486 late	
Modernization Order, 2014	4
Changed FCC Rule requiring all appeals of USAC decisions (that are not RULE based) to go to USAC first, then to FCC if necessary	
Public Notice, 2014.....	4
Allowed grace period for implementation of new rule established in Modernization Order in order that applicants would not be harmed	
La Canada Order, 2015	5
Dismissed an appeal sent directly to the Commission without first appealing to USAC and attempted to clarify that FCC Form 486 deadline is ‘procedural’, not rule based	
Archdiocese of New Orleans Order, 2016	6
Granted relief to 69 petitioners who filed their FCC Form 486 late, even though previous petitioners’ requests had been dismissed between May 30, 2015 and release of this Order which demonstrates conflicting treatment of appellant filings associated with FCC Form 486	
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Inconsistent Treatment of Appeals/Waivers Granted in the New Orleans Order	8
Refer also to Appendices A, B and C	
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Though the Archdiocese of New Orleans Order attempted to clarify that FCC Form 486 deadline is PROCEDURAL and not rule based, the applicant community at large did not ‘get the memo’	

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Putnam County Schools submits that it did comply with the provisions of the Archdiocese of New Orleans Order when it submitted its petition for waiver of its 2015 FCC Form 486 deadlines

The Alaska Gateway School District, Tok, AK, et al. Order DA 06-1781 (dated September 14, 2006)³ (the “Alaska Gateway Order”)

In Alaska Gateway, the Commission granted 128 appeals of “...decisions reducing or denying funding from the schools and libraries universal service support mechanism (also known as the E-Rate program) because they failed to timely submit an FCC Form 486”⁴. The footnote associated with the opening statement in the Order states, *“In this Order, we use the term “appeals” to generically refer to requests for review of decisions, or to waivers related to such decisions, issued by the Commission, the Wireline Competition Bureau, or USAC.”* This is an important distinction because as treatment of the Form 486 deadline has evolved over the years, so have the procedures by which applicants could seek relief for missing the deadline for timely filing of their required FCC Form 486.

On its face, the fact that the form is referred to as an “FCC” Form supports the mindset that its deadline is one rooted in RULE rather than PROCEDURE; just like the rule(s) for FCC Form 470 and FCC Form 471. In the Alaska Gateway Order, the Commission sought to clarify that the deadline associated with Form 486 is one set by USAC⁵, as a procedural deadline⁶ yet, prior to the 2006 Alaska Gateway Order, **in** the Alaska Gateway Order and on HUNDREDS of occasions since, the Commission has routinely processed and approved requests for late filed Form 486 waivers that were timely filed directly to the Commission.

Notably the Alaska Gateway Order used the word “appeal” interchangeably with other types of requests for relief, such as waivers. Clearly the FCC historically has treated the Form 486 deadline as a matter that required FCC waiver of the deadline, whether the deadline was established by regulation or in the FCC Form 486 instructions.

³ https://apps.fcc.gov/edocs_public/attachmatch/DA-06-1871A1.pdf

⁴ eg, DA 06-1871, para 1

⁵ eg DA 06-1871 para 4: “The deadline for receipt of the FCC Form 486, **which is established by USAC**, has varied over the years.” The deadline itself is not set by USAC but rather is in the form instructions. The form instructions were developed by the FCC and subject to OMB approval.

⁶ eg DA 06-1871 para 7 “Given that the applicants missed a **USAC procedural deadline** and did not violate a Commission rule, we find that the complete rejection of each of these applications is not warranted.”

The E-Rate Modernization Order DA 14-99 (dated July 23, 2014)⁷ (the “Modernization Order”)

The distinction between whether a request for relief seeks a waiver or is an appeal became quite important due to the change in procedures announced in the July 2014 E-rate Modernization Order. There, for the first time, the FCC directed stakeholders to file appeals first with SLD, whereas in the past there was no such requirement and stakeholders could opt to file an appeal with SLD or the FCC in the first instance. At the same time, the FCC clarified that since the SLD does not have authority to waive the FCC regulations any request for relief that required a rule to be waived needed to be submitted directly to the FCC, bypassing SLD altogether.

Paragraphs 250-252 describe the rationale behind the proposed change in the Modernization Order. However, even the language on the Modernization Order is confusing, at best.

¶250. *Consistent with our goal of streamlining the administration of the E-Rate program and improving the E-Rate appeals process, we revise section 54.719 of our rules to require parties aggrieved by an action taken by a division of USAC, including the Schools and Libraries Division, to first seek review of that decision by USAC before filing an **appeal** with the Commission.*

¶252. *We find that requiring parties to first file appeals of USAC decisions with USAC itself before seeking Commission review will improve efficiency in the appeals process. It will reduce the number of appeals coming to the Commission, and allow USAC an initial opportunity to correct any of its own errors, and to receive and review additional information provided by aggrieved parties without having to involve the Commission staff. We remind parties filing an appeal with USAC to follow USAC’s appeals guidelines and provide USAC with all relevant information and documentation necessary for USAC to make an informed decision on an appeal. **USAC cannot waive our rules; therefore, parties seeking only a waiver of our rules are not governed by this requirement, but instead must seek relief directly from the Commission or the Bureau.***

The Commission attempted to differentiate the standards for processing ‘appeals’ versus ‘waivers’ with little discussion or clarity for the average beneficiary to be well-versed enough in the minutia of program requirements to be able to accurately determine whether an appeal should be submitted to USAC or whether a waiver request should be submitted to the Commission.

FCC Public Notice DA 14-1657 (dated November 17, 2014)⁸

The Commission issued the Public Notice (“PN”) ostensibly in response to the **significant shift** in policy established in the Modernization Order whereby all appeals should be submitted first to USAC.

⁷ https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-99A1_Rcd.pdf

⁸ https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1657A1.pdf

The PN established a “grace period” through the end of calendar year 2014 by which the Commission would, “...treat any requests that are first filed with the Commission pursuant to section 54.719 as being filed with USAC and transmit such requests to USAC for processing through the end of the calendar year.” It goes on to state, “By contrast, parties seeking waivers of the Commission’s rules must seek relief directly from the Commission.”

At no point in the PN does the Commission seek to clarify how a petitioner is to determine whether their request for relief is related to a program rule (meaning a waiver is required to be filed with the FCC) or simply a “USAC decision” (in which case an appeal must first be submitted to the SLD). Importantly, the PN established a grace period for the transition to implementation of the new requirement and specified that if an appeal was submitted to the FCC but should have been filed with USAC first, the FCC would view the filing as timely and send it to USAC to be processed.

The La Canada Order DA 15-571A1

The La Canada Order from May 11, 2015 dismissed **without prejudice** the appeal filed by La Canada Unified School District seeking relief for a FY 2013 Form 486 Deadline service start date adjustment. La Canada Unified School District filed their request for relief with the Commission on March 2, 2015. The Order stated, “La Canada did not seek relief from USAC before filing the instant appeal.” This applicant apparently was not aware of the new appeal procedures or that seeking relief from a Form 486 adjusted service start Notification Letter required that an appeal must be submitted to SLD.

The Order went on to state, “In 2014, the Commission amended its rules to require parties seeking review of USAC decisions to first file an appeal with USAC. While parties seeking waivers of the Commission’s rules must seek relief directly from the Commission, the FCC Form 486 deadline is a procedural deadline without a corresponding Commission rule.” This statement was footnoted with reference to the Alaska Gateway Order “...noting that the FCC Form 486 deadline is procedural in nature and not a Commission rule.” As discussed earlier in this document, the ONLY reference in the Alaska Gateway Order were five words that fleetingly referenced the “procedural” nature of the Form 486 deadline. This is hardly a solid reference point to dismiss an appeal without substantive explanation or outreach. Further, the Alaska Gateway Order conclusion fails to take into account that the Form 486 deadline is embedded in the instructions to the Form 486 which were developed by the FCC and approved by OMB. While perhaps not technically a rule codified in the Code of Federal Regulations, the deadline most certainly is not one that is simply an administrative procedure established by SLD.

From the release of the La Canada Order, in May 2015, the FCC generally dismissed all late filed Form 486 requests for relief until October 2016, when yet another procedural change was announced, this time addressing the standard for review of requests for relief of late-filed Form 486 applications.

The Archdiocese of New Orleans, Louisiana, et al. Order DA 16-1205 (dated October 20, 2016)⁹ (the “New Orleans Order”)

In the New Orleans Order, the Commission sought to “...take this opportunity to **revisit our approach** to granting relief to petitioners that fail to timely submit an FCC Form 486...”¹⁰, again citing the Alaska Gateway Order, paras. 6-7 (finding good cause to grant appeals where petitioners missed the deadline for filing an FCC Form 486 because the late filings were the result of immaterial clerical, ministerial or procedural errors, or were due to circumstances beyond their control). The Order goes on to state, “...**we had routinely issued orders granting appeals involving late-filed FCC Forms 486.**”¹¹ (*emphasis added*). Importantly, no caveat was inserted about the new process announced in the La Canada Order that these appeals must first be submitted to USAC.

Paragraph 10 of DA 16-1205 describes the impetus for the re-visitation of the parameters under which relief for a late filed Form 486 could be granted:

“... WE now clarify that, absent extraordinary circumstances, WE will only grant relief for late-filed FCC Forms 486 that were filed no later than 120 days after the last day to receive service for the funding request at issue and where the applicants have demonstrated good cause for the late filing.”¹²

The Order continues to impart that, “**We** will apply this standard on a going-forward basis to all appeals filed with USAC **or the FCC** on or after January 30, 2017. Using a FOOTNOTE (#31) in the New Orleans Order, the Commission states, “This date not only give applicants a *grace period* before the new appeal standard is applied but **gives USAC an opportunity to establish new FCC Form 486 appeal procedures.**” (*Emphasis added*).

The statement above, indicating the need for USAC to establish **NEW FCC Form 486 appeal procedures**, further supports the notion that prior to the issuance of the New Orleans Order, USAC did

⁹ https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1205A1.pdf

¹⁰ eg, DA 16-1205, para 1

¹¹ eg, DA 16-1205, para 6

¹² eg, DA 16-1205, para 10

not routinely (or arguably, ever) issue positive decisions on any FCC Form 486 appeals it may have received.

The New Orleans Order continues, stating “In the interest of fairness, **we** will continue to apply the current Alaska Gateway Order-based standard to **appeals filed with USAC or the Commission before January 30, 2017** (*emphasis added*).”¹³ In these instances, “WE” clearly intimates that it is the **Commission** that will be taking action based on the new standard.

By the Commission’s own admission in paragraph 6, it was ROUTINE for requests for relief for late filed Form 486s to be filed with the Commission as a waiver rather than an appeal and as discussed throughout this document, in practice, it had been so for almost the entire life of the E-Rate Program.

A Perfect Storm:

Where things go awry, and why Putnam County Schools feels so strongly that a Reconsideration or Waiver is warranted in this instance is that in the New Orleans Order, the Commission **GRANTED relief for 69 petitioners** at least two of which had filed their late filed Form 486 waivers/appeals directly with the Commission¹⁴ and at least one petitioner who was contacted by the FCC to re-file their appeal with USAC¹⁵ because they first filed their appeal with the Commission. It is impossible to know with certainty whether ALL the petitioners for whom relief was granted in the New Orleans Order had in fact filed their FCC Form 486 appeals with USAC first because USAC appeals are not part of the public domain however, even one instance of inconsistent treatment should constitute grounds for our Petition for Reconsideration.

Putnam County School District respectfully contends that this inconsistent treatment alone is grounds for reconsideration of the dismissal of our requests and immediate remand to USAC for processing without penalty.

¹³ eg, DA 16-1205, para 11

¹⁴ See <https://www.fcc.gov/ecfs/filing/60001095748> (Newark 06152015) and <https://www.fcc.gov/ecfs/filing/60001091713> (Newark 07072015) and Appendix B

¹⁵ See <https://www.fcc.gov/ecfs/filing/60001095731> (Hatch 04022015) and Appendix C. Hatch filed their waiver request directly with the Commission on April 2, 2015 a full month after La Canada filed its appeal (March 2, 2015). La Canada’s appeal was dismissed on May 11, 2015 while Hatch’s appeal received special handling via contact from the Commission to re-file the appeal with USAC shortly after it was filed ‘incorrectly’.

Discussion of Inconsistent Treatment of Appeals/Waivers Granted in the New Orleans Order

As noted above, there are at least three instances of appeals/waivers that were granted in the New Orleans Order that are inconsistent with the precedent(s) established in the **Modernization Order**, the November 17, 2014 **Public Notice** and/or the **La Canada Order**.

Item #1: *Hatch Valley Public Schools (correspondence originally dated April 2, 2015, directly with the Commission)*

Based on the record found in the FCC's ECFS, Hatch Valley Public Schools filed a late filed FCC Form 486 appeal for six (6) different 2014 Form 471 applications featuring a total of seven (7) funding requests, directly with the Commission on April 2, 2015.

Also, based on the record, "soon after" the April 2, 2015 first filing with the Commission, Hatch Valley was notified by the Commission that it should have filed its appeal(s) with USAC first and were directed to do so.

Hatch Valley submitted an exact copy of what was submitted originally to the FCC to USAC in correspondence dated May 15, 2015. The correspondence to USAC clearly stated what has been the typical outcome of Form 486 appeals filed with USAC, ***"It is our understanding that USAC, generally, does not waive its administrative deadlines, but we believe that the fact pattern does warrant such a waiver."***¹⁶

Hatch Valley submitted all the same documentation that was submitted to the Commission including a statement indicating they were directed by the Commission to submit their appeal directly with USAC. Alas (but as expected), USAC denied Hatch Valley's May 15, 2015 appeal very quickly (on May 29, 2015) and Hatch Valley had to ultimately RE-FILE their appeal to the Commission on July 26, 2015.

Summary of inconsistent treatment:

- Hatch Valley filed their appeal directly with the Commission dated April 2, 2015 AFTER;
 - The issuance of the Modernization Order requiring appeals of USAC decisions be first filed with USAC;

¹⁶ See letter dated May 15, 2015 from Hatch Valley to USAC appealing their late filed Form 486 service start date adjustment (page 4 of Appendix C)

- The expiration of the grace period for implementation of the new rule referenced in the Public Notice (dated November 17, 2014) however, they did receive outreach and re-direction of their appeal back to USAC.

Hatch Valley submitted their appeal directly with the Commission a full 30 days after La Canada Unified School District submitted THEIR appeal directly with the Commission yet, Hatch Valley received outreach to re-direct their appeal to USAC while La Canada's appeal was dismissed without prejudice on May 11, 2015. Why did Hatch Valley receive the additional outreach when La Canada did not?

It is also very telling that **USAC DENIED Hatch Valley's appeal** even with knowledge that the FCC had specifically re-directed the appeal back to them considering the changes implemented in the Modernization Order, Public Notice and even after release of the La Canada Order.

Item #2: *The Newark Public Schools (correspondence dated June 15, 2015, posted June 22, 2015 directly with the Commission)*

Based on the record found in the FCC's ECFS, the Newark Public Schools filed a late filed FCC Form 486 appeal for four (4) funding requests featured on 2014 Form 471 application number 941652. The record does not reference an appeal denial from USAC, it appears to simply reference the issuance of a USAC adjusted service start date.

Summary of inconsistent treatment:

- Newark filed their appeal directly with the Commission dated June 15, 2015 AFTER;
 - The issuance of the Modernization Order requiring appeals of USAC decisions be first filed with USAC;
 - The expiration of the grace period for implementation of the new rule referenced in the Public Notice (dated November 17, 2014), and;
 - The issuance of the La Canada Order (May 11, 2015) dismissing the appeal that was first filed with the FCC on March 2, 2015.

Despite the facts noted above and no apparent evidence of the petitioner first filing an appeal with USAC, the Newark appeal was granted in the Archdiocese of New Orleans Order on October 20, 2016.

Item #3: *Newark School District (correspondence dated July 7, 2015 directly with the Commission)*

Based on the record found in the FCC's ECFS, The Newark Public Schools filed a late filed FCC Form 486 appeal for four (4) funding requests featured on 2013 Form 471 application number 909811. The record does not reference an appeal denial from USAC, it appears to simply reference the issuance of a USAC adjusted service start date.

Summary of inconsistent treatment:

- Newark filed their appeal directly with the Commission dated July 7, 2015 AFTER;
 - The issuance of the Modernization Order requiring appeals of USAC decisions be first filed with USAC;
 - The expiration of the grace period for implementation of the new rule referenced in the Public Notice (dated November 17, 2014), and;
 - The issuance of the La Canada Order (May 11, 2015) dismissing the appeal that was first filed with the FCC on March 2, 2015.

Despite the facts noted above and no apparent evidence of the petitioner first filing an appeal with USAC, The Newark appeal was granted in the Archdiocese of New Orleans Order on October 20, 2016.

Lack of Transparency or Proper Notice to the Stakeholder Community:

Since the New Orleans Order sought to “**provide USAC with guidance**” and to clarify that the Form 486 deadline is a *procedural* deadline and not a program rule, it lends itself to the Commission allowing a grace period for late filed Form 486 waivers submitted first and directly to the Commission after October 20, 2016 but before January 30, 2017; much like the grace period(s) that have been allowed through a Public Notice during any previous substantive guidance change(s).¹⁷ The New Orleans Order DID speak to a grace period but based on Putnam County Schools’ dismissal in February, 2017, the Commission did not adhere to the standard it seemingly set in the New Orleans Order by stating in

¹⁷ https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1657A1.pdf. This Public Notice allowed, “...that we will treat any requests that are first filed with the Commission pursuant to section 54.719 as being filed with USAC and transmit such requests to USAC for processing through the end of the calendar year.”

footnote 31, “This date [January 30, 2017] not only give applicants a **grace period** before the new appeal standard is applied...”

It seems the Commission intended that the message program participants would receive from the language in the New Orleans Order is that all late filed Form 486 appeals going forward would now be handled exclusively by USAC; however, that message was NOT conveyed clearly. In fact, it was veiled in an obscure, routine FCC Order (The La Canada Order) and simply referenced as a matter of interest in the New Orleans Order. It could be argued that the Archdiocese of New Orleans Order (much like the Modernization Order) would have benefitted from a Public Notice to truly clarify what was intended by the language presented in the Order, given it was so obviously murky.

Conflicting Guidance

The information CURRENTLY available on the SLD’s website is conflicting, at best.

The APPEALS section of the Schools and Libraries Division website (redirects to the USAC website) and indicates that ‘waiver of form deadlines’ should be sent to the FCC but it does not differentiate BY FORM whether the appeal should be sent to USAC first. If one were to only read the guidance provided, the correct procedure for filing a request for relief (whether appeal or waiver) would be to file with the FCC since the request is for waiver of a form deadline.

<http://www.usac.org/about/about/program-integrity/appeals.aspx>

Appeals

Any party (including, but not limited to entities filing an FCC Form 499, federal universal service program applicants, and service providers) that wishes to appeal a USAC decision must first file an appeal with USAC to seek review of the USAC decision before filing an appeal with the FCC. Parties seeking a waiver of FCC rules (i.e. late payment fees, **waiver of form deadlines**, etc.) should file an appeal directly with the FCC because USAC cannot waive FCC rules. Once a decision has been made on a USAC appeal, a party may appeal USAC’s decision to the FCC.

Summary and Final Plea for Relief:

The very real problem we find with the guidance issued in the various Orders discussed throughout this document and the ultimate dismissal of Putnam County Schools’ Form 486 Deadline Waiver Request is that on one hand, the FCC indicates it will continue to process appeals (waivers) submitted prior to January 30, 2017 as it has for the past several years (in the New Orleans Order). On the other hand, it dismissed our waiver that was filed precisely in accordance with the ‘new’ standard

imposed in the New Orleans Order and finally, it treated other similar petitions differently in the New Orleans Order and in conflict with the Modernization Order, Public Notice and La Canada Order.

As discussed, the New Orleans Order stated, “We will apply this standard on a going-forward basis to all appeals **filed with USAC or the FCC on or after January 30, 2017**. In the interest of fairness, we will continue to apply the current *Alaska Gateway Order*-based standard to appeals filed with USAC **or the Commission** before January 30, 2017.”

For TEN YEARS, based on the 2006 Alaska Gateway Order, the Commission consistently processed late filed Form 486 appeals/waivers without differentiating between whether the item was an appeal or a waiver. Indeed, this same treatment continued through January 30, 2017 via the language in the New Orleans Order. Therefore, we feel strongly the dismissal of the waiver requests should have in fact been a remand to USAC to immediately preserve the petitioner’s ability to ‘correctly’ file with USAC.

If our Petition for Reconsideration is not appropriate, Putnam County School District respectfully requests the Commission waive the 60-day rule for filing an appeal with USAC’s SLD (in this instance) to allow timely processing of the instant appeal that is being coincidentally filed with USAC’s SLD.

We thank you in advance for your thoughtful consideration of our request(s).

Most Sincerely,

/S/

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